

REMARKS

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendments, claims 30-55 are pending in the application, with claims 30, 40 and 46 being the independent claims. Claims 1-29 have been canceled without prejudice or disclaimer. Because the foregoing changes introduce no new matter, their entry is respectfully requested.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

The Specification

Reference numeral "229" was mistakenly used to identify both an upper ramp surface (see, e.g., paragraph no. 50) and an annular space (see, e.g., paragraph no. 56). Accordingly, paragraph no. 56, FIG. 13 and FIG. 14 were amended such that reference numeral --230-- is now used to refer to the annular space.

Claim Objections

The Examiner made objections to claims 31 and 32. Claims 31 and 32 have been amended to include a period. Applicant respectfully submits that the rejection of claims 31 and 32 are overcome by the accompanying amendment thereto.

Rejections under 35 U.S.C. § 112

The Examiner has rejected claim 46 under 35 U.S.C. §112, second paragraph as being indefinite. Applicant respectfully submits that the rejection of claim 46 is overcome by the accompanying amendment thereto.

Rejections under 35 U.S.C. § 102***Claims 30, 31, 33-36***

The Examiner has rejected claims 30, 31, 33-36 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,978,016 to Hayes ("the Hayes patent"). The Hayes patent lacks the tamper-indicating closure of the present invention having a free edge of a retaining rim including a locking surface engaging structure formed to ensure breakage of the frangible connection upon removal of the closure cap, wherein the locking surface engaging structure is defined by *upward facing ramp elements* forming a one-way ratchet mechanism, as is called for by amended claim 30.

The Hayes patent does not disclose such upward facing ramp elements. In fact, the Hayes patent fails to teach or suggest any ratchet mechanism. Instead, the Hayes patent discloses a closure 11 having a retaining hoop 29 with relief windows 36. *See* column 3, lines 20 *et. seq.*

In contrast, the tamper-indicating closure of the present invention includes a free edge of a retaining rim (e.g., retaining rim 224) that has a locking surface engaging structure formed to ensure breakage of the frangible connection upon removal of the closure cap. *See*, e.g., page 12, paragraph no. 53; FIG. 13. The locking surface engaging structure is defined by *upward facing ramp elements* (e.g., ramp surfaces 229) that form a one-way ratchet mechanism. *See*, page 11, paragraph no. 50; FIG. 13.

For at least these reasons, Applicant respectfully submits that the Hayes patent does not anticipate presently amended claim 30. Applicant submits that claims 31-39, which depend from claim 30, are allowable over the cited art for at least the same reason noted above.

Claims 46-47

The Examiner has rejected claims 46-47 under 35 U.S.C. § 102 as being anticipated by the Hayes patent. The Hayes patent lacks the tamper-indicating closure of the present invention having a free edge of a retaining rim including a plurality of pleats, and at least one passageway

through the retaining rim located *between a circumferentially adjacent pair of pleats* for drainage of liquid from the closure cap, as is called for by amended claim 46.

The Hayes patent does not disclose a passageway located between pleats. Instead, the Hayes patent discloses a closure 11 having a retaining hoop 29 with relief windows 36. *See* column 3, lines 20 *et seq.*; FIG. 6. The Hayes patent further discloses deformed portions 42 that are formed by relief windows 36. Column 4, lines 66 *et seq.* However, relief windows 36 are not located between deformed portions 42, and thus, can not be considered to be positioned between pleats. In fact, the Hayes patent teaches away from positioning the windows between pleats as the Hayes patent discloses that the deformed portions 42 are formed by the relief windows 36. *Id.* (“[T]he provision of the relief ports 36 permits the hoop to deform radially in the regions between the hinges [34], as indicated at 42”). Thus, it stands to reason that hinges 32 do not permit the hoop to deform radially in the regions along the hinges.

In contrast, the tamper-indicating closure (e.g., 10) of the present invention includes a free edge (e.g., 26) of a retaining rim (e.g., 24) that has a plurality of pleats (e.g., 28). The tamper-indicating closure further includes at least one passageway (e.g., 31) that extends through the retaining rim *between a circumferentially adjacent pair of pleats* for drainage of liquid from the closure cap. *See* page 10, paragraph 46; FIG. 11. As noted in the originally filed application, pleats on a retaining band may act as circumferential barriers to the migration of liquid. *See id.* Accordingly, locating a passageway between adjacent pleats in accordance with the present invention allows drainage of liquid that is trapped between the adjacent pleats.

For at least these reasons, Applicant respectfully submits that the Hayes patent does not anticipate presently amended claim 46. Applicant submits that amended claim 47 and new claims 48-57, all of which depend from claim 46, are allowable over the cited art for at least the same reasons as claim 46 noted above.

Double Patenting***Claims 1-16***

The Examiner has rejected claims 1-16 under double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,484,896 ("the '896 patent"). Claims 1-16 have been cancelled without prejudice or disclaimer. Applicant respectfully submits that the Examiner's rejection of claims 1-16 is rendered moot by cancellation thereof.

Claims 17-29

The Examiner has rejected claims 17-29 under double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,112,923 to Ma ("the '923 patent"). Claims 17-29 have been cancelled without prejudice or disclaimer. Applicant respectfully submits that the Examiner's rejection of claims 17-29 is rendered moot by cancellation thereof.

Claims 32 and 37-45

The Examiner has rejected claims 32 and 37-45 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-16 of U.S. Patent No. 5,913,437 to Ma ("the '437 patent"). Submitted herewith is a Terminal Disclaimer to Obviate a Double Patenting Rejection (37 CFR § 1.321(c)) and Certificate under 37 CFR § 3.73(b) ("Terminal Disclaimer") disclaiming the terminal part of any patent granted on the above-captioned application which would extend beyond the term of the '437 patent. Applicant respectfully submits that the Examiner's nonstatutory double patenting rejection of claims 32 and 37-45 is overcome by the Terminal Disclaimer submitted herewith.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for

PATENT

Attorney Docket No. A-64345-4/RBC/VEJ
Attorney Matter No. 463678-00065
Application No. 09/955,844

any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00065; Docket No. A-64345-4/RBC/VEJ).

Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

DORSEY & WHITNEY LLP

Date: 2/9/2004

By: 

Victor E. Johnson, Reg. No. 41,546
/for/ Robert B. Chickering, Reg. No. 24,286
Filed Under 37 C.F.R. § 1.34(a)

DORSEY & WHITNEY LLP
Four Embarcadero Center, Suite 3400
San Francisco, CA 94111-4187
Telephone: (415) 781-1989 Facsimile: (415) 398-3249